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ON

H.R. 3822

BEFORE THE

SUBCOMMITTEE ON LEGISLATION
OF THE
PERMANENT SELECT COMMITTEE
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Mr. Chairman and Distinguished Members:

I am honored by your invitation to appear today to comment not only on the specific bill you are considering, H.R. 3822, but also on the larger issues addressed in that proposed legislation.

These larger issues impinge directly on our nation's security and even its chances of survival in this strife-ridden and now thermonuclear world. As we all know, it is not easy for an open democracy, such as ours, to have the kind of effective intelligence structure our nation needs -- one that is capable of protecting our democratic freedoms but does not curtail or, even worse, subvert them. These are issues to which I devoted the first twenty-six years of my professional life and in which, as a citizen, I have an abiding interest. It is a pleasure, as well as a privilege, to discuss them with this sub-committee. I feel confident that as fellow citizens we have common goals and objectives; for the issues here involved transcend personal, parochial or partisan considerations. Our differences, and your differences among yourselves, will be over the optimum means of achieving these common goals, and the best way of resolving the complex, thorny questions these issues, in a democracy, inevitably pose.

The matters addressed in H.R. 3822 are of enormous importance, as well as complexity. The time you have available

in this hearing for considering them, particularly the time you can allocate to any single witness, is necessarily constrained. I have hence separately submitted, in writing -- for the record and for your consideration, at your convenience -- my detailed comments on H.R. 3822 and the issues with which it deals. In this orally-presented summary statement, I will draw on that fuller submission to highlight some points to which I particularly want to direct your attention.

In no small measure, the stimulus for H.R. 3822 and other proposed bills dealing with intelligence matters, in both Houses, was eminently understandable Congressional concerns generated by what has come to be known as the Iran-Contra Affair. In this context, however, I would respectfully urge this sub-committee to keep constantly in mind the judgments expressed in the two opening paragraphs of the "Recommendations" Chapter of the Report of the Congressional Committees which investigated that unhappy imbroglio:

> "It is the conclusion of these Committees that the Iran-Contra Affair resulted from the failure of individuals to observe the law, not from deficiencies in existing law or in our system of governance...Thus the principal recommendations emerging from the investigation are not for new laws but for a renewal of the commitment to Constitutional government and sound processes of decision making."

There is one other thing which, at the outset, I would also respectfully ask you to remember. The primary focus of the specific legislation this sub-committee is considering, H.R. 3822, and of current congressional concerns with respect to

intelligence is, quite understandably, covert action. The primary function of the U.S. intelligence community and of the CIA, however, is to collect information, distill it into intelligence by analysis, and then disseminate the fruits of this collection and analysis to those in our government's executive and legislative branches whom that intelligence will aid in the discharge of their Constitutionally-mandated responsibilities.

Covert action is an important intelligence community and, specifically, CIA responsibility, but an ancillary one. Extreme care should be taken to ensure that any "fixing" of covert action does not unintentionally hamper the Agency's and the intelligence community's ability to perform their primary mission -- for example, by putting sensitive intelligence sources and methods at risk. This is particularly important when arms limitation treaties, especially ones involving strategic arms, are being considered and negotiated; for our compliance-monitoring capabilities, in this critical sphere, hinge on the U.S. intelligence community's overall effectiveness.

COVERT ACTION

"Covert action" is a term with such a broad scope that it is impossible to define with any degree of precision. It encompasses everything from encouraging a foreign journalist to write a story or editorial which that journalist might well have

written anyway to supporting, even guiding, fairly large-scale military activities in foreign lands. The usual euphemism for covert action, employed in the legislation you are considering, is "special activities" -- defined in Executive Order 12333 (and elsewhere) as:

> "activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities...."

As the report of the Iran-Contra Congressional Investigating Committees notes, on page 375,

> "This definition excludes diplomatic activities, the collection and production of intelligence, or related support functions."

Intelligence activities, generally, are not easy for an open, democratic society to conduct effectively, especially in peacetime. For a plethora of reasons, covert action is particularly difficult, for a society such as ours, and raises particularly difficult questions -- ones that have no universally satisfactory resolutions, let alone any simple answers.

To begin with, there is a consideration that is not polite to acknowledge or discuss, but which has to be faced. In most cases, conducting covert action involves contravening, infringing upon or directly violating the laws of some other nation or nations, with which we are not in a state of war and with which, indeed, we may have treaty relations whose spirit, if not letter, such covert actions may also contravene. (The same is also true of espionage, but that is another matter.) This does not mean we

should pass a self-denying ordinance; for covert action is a fact of international life. It is something that virtually every nation in the world engages in, often directed at us; and some of our closest allies are among its most indefatigible practitioners. Covert action, however, should be used very circumspectly, far more circumspectly than it sometimes has been -- as Iran-Contra demonstrates all too clearly. When astutely employed, covert action can be a very useful, effective adjunct to policy; but it can never be a substitute for policy -- or for thought.

Such messy complexities, and the troublesome issues they raise, lead some to argue that the United States should eschew or abandon covert action altogether. In a perfect world, this might be desirable; but in the world in which we have no choice but to live, it would be folly. One point on which members of the Congressional Committees investigating the Iran-Contra Affair were agreed is that, to use their Report's words (on page 383), "Covert operations are a necessary component of our Nation's foreign policy". The real question before Congress, and the American people, is not whether our nation should conduct covert action but, instead, how such operations should be handled, controlled and reviewed to ensure that they are soundly conceived, efficiently executed and effective, but do no injury to any of our democratic polity's fundamental interests or basic values.

Congress was quite understandably distressed by the kinds of covert operations mounted during what we now term "Iran-Contra", by these operations' execution and, particularly, by the way in which Congress was handled with respect to them. No matter how admirable or defensible the administration's motives and objectives may have been, the way in which these operations were developed and run violated every canon and precept of sound professionalism, not to mention common sense. Furthermore, all other considerations apart, the administration's manner of dealing with Congress during this episode was both inept and politically tone-deaf.

Congress has ample reason to be irritated at the administration, and concerned about the way it handled that specific set of covert actions. In dealing with important issues, however, particularly ones as complex as these, all prudent humans -- including distinguished members of Congress, and of both of its intelligence oversight committees -- should avoid acting hastily, with punitive intent, under the stimulus of irritation.

CONSTITUTIONAL DIVISIONS OF AUTHORITY

Our Constitution does not explicitly mention intelligence, let alone covert action, nor does it use the terms "foreign policy" or "foreign affairs". By design, nonetheless, the

Constitution divides authority and responsibility in this sphere as well as in others. Legislative-executive branch debates over roles and primacy in the general field of foreign policy are as old as, or even antedate, our republic. Parallel debates with specific respect to intelligence, however, are of considerably more recent vintage.

Though the word "intelligence" does not appear in the Constitution, how those who framed it viewed the intelligence function is quite forcefully and clearly expounded by John Jay -- who as a co-author of The Federalist Papers and then, under the new Constitution, our nation's first Chief Justice is certainly a reliable, authoritative source regarding "original intent".

In Federalist 64, discussing foreign affairs generally and treaty negotiations specifically, Jay wrote:

> "It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and immediate dispatch are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such manner as prudence may suggest."

John Jay clearly regarded "the business of intelligence" as being primarily a presidential or executive branch function, not a legislative branch responsibility -- a view shared by all serving presidents from Washington onward.

While in office, our early presidents -- the ones who had been directly and personally involved in the formulation and adoption of our Constitution -- certainly did not act as if they felt that what we would now term covert action required Congressional involvement or, even less, prior Congressional knowledge. Indeed, if Jefferson, the drafter of the Declaration of Independence, or Madison, the principal architect of our Constitution had shown, as President, the diffident deference to Congress that many now claim a President is constitutionally obligated to show, in conducting foreign affairs, our republic would not now have its present territorial extent and probably would not have survived its perilous initial decades.

In these areas -- where the Constitution deliberately divides authority -- our national interests are certainly not furthered by executive-legislative branch squabbles over turf, or attempted raids on each other's prerogatives. At both ends of Pennsylvania Avenue there needs to be a greater recognition than has been notable in recent months of the fact that, especially in the field of foreign affairs, our Constitution yokes the legislative and executive branches in a single harness, and

unless they can pull together, in tandem, the nation suffers.

THE MATTER OF BALANCE

Involved here is one of our Constitution's many delicate balances, a balance carefully and properly acknowledged in the National Security Act of 1947's current Section 501, which H.R.3822 proposes to strike and replace with new language.

As this sub-committee well knows, that 1947 Act, as amended, contains what is still the basic charter of the CIA, the Director of Central Intelligence and, indeed, the U.S. intelligence community. Section 501 of that Act deals with Congressional oversight. It was added to the 1947 Act by Sec. 407(b)(1) of the Intelligence Authorization Act for Fiscal Year 1981 (P.L. 96-450), known informally as the Intelligence Oversight Act of 1980. As it now stands, Sec. 501's sub-section (a) -- before spelling out what, and how, the DCI and all intelligence community component heads are required to report to the Congress -- begins with a preambular clause that reads:

> To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall --

Then follows the list of reporting requirements.

Before this sub-committee or the full oversight committee recommends that the House, and the Congress, jettison the carefully crafted preambular language of the National Security Act of 1947's current Sec. 501(a), I respectfully urge that renewed, careful consideration be given to the cogent arguments presented to this very oversight Committee in September 1983, when it was also considering legislation on "special activities", by Mr.William Miller, who had previously served as the Staff Director of the Church Committee and then of the Senate's intelligence oversight committee. In his statement, Mr. Miller observed:

> "What is now the law of the land in Sec. 501 is the result of the several years experience of both intelligence oversight committees, and that of other House and the Senate Committees that have had responsibilities for intelligence activities since the Second World War. The existing law is the result of discussions, negotiations and give and take with two administrations, including the direct involvement of two Presidents, two Vice Presidents, four Directors of Central Intelligence, three Attorneys-General and a host of other Cabinet officials, Department heads, Senators, Congressmen, Chiefs of Staff, constitutional experts and lawyers and other interested citizens. It is not suprising that many urge caution about amending existing law, given the delicate issues involved and the broad spectrum of perspectives that Sec. 501 had to encompass."

What Mr. Miller said in 1983 applies with equal force in 1988.

SECURITY CONCERNS -- "DUE REGARD"

Striking current Sec. 501 and, hence, 501(a)'s opening clause would not only strike that clause's carefully drafted

reference to the need to keep Congressional oversight authorities and executive branch reporting requirements consistent with the constitutional and "balance" issues here involved. It would also strike the general, tone-setting reference to the need to keep them consistent "with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods".

Similar "due regard" language does twice appear somewhat later in H.R. 3822, in proposed Sections 502(a) and 503(b), but with a very significant modification -- a modification that neatly illustrates some of the problems engendered by the speed with which H.R. 3822 appears to have been drafted.

The final clause of the National Security Act's Sec. 102(d)(3), which H.R. 3822 would not affect, provides:

> "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

This language is repeated, and slightly broadened, in the just-quoted "due regard" text of current Sec. 501(a)'s preambular clause, which H.R. 3822 would strike. H.R. 3822's proposed Sec. 501(d) echoes current Sec. 501(a)'s language and broadens it a bit further by calling for procedures:

> "to protect from unauthorized disclosure <u>all</u> classified information and <u>all</u> information relating to intelligence sources and methods furnished to the intelligence committees or to Members of Congress under this title."

On this singularly important topic, however, the "due regard" passages of H.R. 3822's proposed sections 502(a) and 503(a) reverse field sharply, in a confusingly inconsistent way.

With respect both to intelligence activities generally (in 502(a)) and to special activities (in 503(a)), these two proposed new sub-sections, in identical language, require the DCI et. al. "to keep the intelligence committees fully and currently informed",

> "To the extent consistent with due regard for the protection against unauthorized disclosure of classified information relating to sensitive intelligence sources and methods..." (emphasis added)

"Sensitive" is an adjective whose definition, or applicability in any concrete situation, is both imprecise and subjective. H.R. 3822 makes "sensitive" a hallmark characteristic restricting what needs to be protected, but nowhere does H.R. 3822 give this key, limiting adjective a definition governing its use in that particular context. Nor does H.R. 3822 specify who is to decide in any particular case, involving particular intelligence sources and methods, whether those sources and methods, in that case, are "sensitive". Is this determination to be made by the President, by the DCI, by the Congress as a whole, by either or both intelligence oversight committees -- or by whom? These may seem to be pedantic quibbles; but such inconsistencies and ambiguities could easily become enormously important in a complex, real-life situation --

particularly one involving decisions at both ends of Pennsylvania Avenue on what needs to be told to, or can legitimately be divulged by, the Congress, and when.

Such ambiguities and inconsistencies set the stage for future legislative-executive branch squabbles over security which ill-serve our national interests. Such squabbles will become almost inevitable if the Congress and its oversight committees deem themselves the arbiters of what information is, or is not, "sensitive" -- in ways that future administrations, of whatever party, are bound to balk at, for very good reasons, if these administrations or their DCIs define "sensitive" in a different fashion.

Though the executive branch is not, and never has been, any paragon of perfection with respect to discretion, it is worth noting that concerns about Congressional security are not only as old as our republic but, in fact, antedate our Constitution. Speaking of France's willingness to provide essential covert assistance to the revolutionary cause, Benjamin Franklin and Robert Morris -- in their capacity as members of the Committee of Secret Correspondence of the Continental Congress, America's first intelligence organization -- noted, on 1 October 1776:

> "We agree in opinion that it is our indespensable duty to keep [this important intelligence] a secret, even from Congress ... We find, by fatal experience, the Congress consists of too many members to keep secrets."

This prickly subject is addressed in some detail in my supplementary submission. I will not explore it further in this summary statement but, instead, will turn to the by no means unrelated issue of "findings".

THE MATTER OF FINDINGS: MORE SECURITY CONCERNS

Presidents since Washington, certainly since Jefferson, have conducted covert actions or "special activities," or directed that they be conducted, whenever they felt the interests of the United States would be served by, or required, such activities -- without feeling any particular need for Congressional involvement or, often, knowledge, let alone Congressional direction or legislatively-conferred authority. H.R. 3822's proposed Sec. 503(a), would seem to break new Constitutional ground by stipulating, in a statute, that a President

> "may authorize the conduct of a special activity by departments, agencies, or entities of the United States Government only when he determines such an activity is necessary to support the foreign policy objectives of the United States and is important to the national security of the United States"

Proposed Sec. 503(a) then goes on to add "which determination shall be set forth in a finding that shall meet each of the following conditions," of which there are five. Every one of them raises potentially serious problems -- starting with the first, which stipulates that every finding shall be in writing, or reduced to writing "in no event more than forty-eight hours after the decision [to initiate the special activity in question]

is made. In my supplementary submission, I comment on all five of these conditions. Here, in the interests of time, I will address only the fourth -- using it as a paradigm.

This fourth condition (Sec. 503(a)(4)) is that:

> "Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the special activity concerned, or be used to undertake the special activity concerned on behalf of the United States;"

As do the other conditions, this one has a clear, eminently understandable Iran-Contra inspiration; but no matter how reasonable and defensible this condition's intent may be, its language contains the potential for more problems, of greater severity, than those engendered by all of the other conditions combined. As it stands, this fourth condition's language can be construed as being either trivial or as being extraordinarily dangerous, on security grounds.

Virtually no foreign intelligence operation, certainly no covert action operation or "special activity", can be successfully conducted without the cooperation and utilization of foreigners -- including individuals, entities or organizations, such as intelligence services, governments, or some combination of any or all of these. No sensible U.S. intelligence officer or service could plan a "special activity" without, at a minimum,

"contemplating" that one or more foreign individuals, organizations, services or governments might be used "to fund or otherwise participate", in some significant way, "in the special activity concerned on behalf of the United States".

In this whole matter, indeed, H.R. 3822 attempts to draw a distinction which may sound very simple, neat and tidy in a proposed statute; but which in the real world is very difficult to draw, and often does not exist. In the actual conduct of intelligence activities abroad, the cooperating institutional and individual assets ("agents", if you will) used in "special activities" and those used in normal, albeit sensitive, intelligence collection activities are often the same -- the same institutions, the same organizations, and the same people. Given the real world's exigencies and complexities, consequently, there is often no way you can meaningfully distinguish -- for purposes of reporting to Congress -- betweeen foreign institutions and individuals who assist in the conduct of "special activities" and those who assist in the conduct of intelligence activities in general.

If proposed sub-section 503(a)(4) is construed as requiring only a general statement, then it is virtually meaningless; for if so construed, it can be satisfied by a standard, boiler plate sentence mechanically incorporated in every finding and saying something along the lines of "The special activity herein

described of course contemplates the use and participation of one or more non-U.S. individuals, persons, organizations or entities." If sub-section (4) is supposed to mean more than that, however, particularly if it is intended to require giving some specific indication of what types of non U.S. government "third parties" will be participating, and in what ways, in the "special activity" covered by a particular finding, then that condition lays down a security minefield impossible to traverse unscathed.

The language of the final sentence of H.R. 3822's proposed sub-section 503(e) could easily be read as supporting a broad construction of this fourth condition of sub-section 503(a). That sentence says (in language evoking Gertrude Stein):

> "A request by any agency or department of the United States to a foreign country or a private citizen to conduct a special activity on behalf of the United States shall be deemed to be a special activity."

If H.R. 3822 is enacted, as currently drafted, this sentence could easily be construed as meaning that the executive branch is required to write and submit a separate finding on each and every request to a foreign government, and each and every recruitment pitch to a foreign national, for assistance in a U.S. covert action operation.

Should proposed Sec. 503(a)(4) ever be given this type of broad construction, now or in the future, satisfying its requirements would inevitably involve security risks so grave

that no prudent U.S. President, administration, or Director of Central Intelligence -- not to mention foreign individual, entity or government -- would want to run them.

In this context, please remember that less than one year ago, on 8 April 1987 -- in testifying before the full House oversight committee in a hearing that at least some distinguished members of this sub-committee doubtless attended -- Representative Norman Y. Mineta, a staunch proponent of strict Congressional intelligence oversight, confirmed and acknowledged that the Canadian government did not want its 1980 role in hiding, protecting and safely exfiltrating American hostages from Iran to be reported to Congress by President Carter in a finding, at least while that operation was in train -- a matter to which I shall return in a moment.

I know from my own experience as Chairman of the U.S. Intelligence Co-ordinating Committee in Germany, from 1976-1979, how skittish my West German, Israeli, and other friendly foreign service counterparts were about sharing sensitive information, especially operational information, on common concerns and targets -- such as terrorism -- because of their worries about how such information, after I reported it, would be handled back in Washington, particularly if it was passed to Congress. The strong, almost universal perception of my foreign counterparts was that in the United States, we were manifestly incapable of

protecting even our own secrets, hence we could hardly be relied on to protect theirs. We may consider such foreign perceptions unwarranted and inaccurate, but their widespread existence and their force are facts that American intelligence professionals can not ignore or brush aside when planning operations -- of any nature -- in which cooperative foreign participation is essential.

Such foreign perceptions and concerns would be inflamed and exponentially increased if H.R. 3822's proposed sub-section 503(a)(4) should ever be enacted into law, and then broadly construed. Should it ever come to be widely believed abroad that U.S. law required -- or even that there was a serious risk that U.S. law might require -- the identification in a written document, of which at least two copies would be sent to Congress, of all non-U.S. individuals and entities, including governments, cooperatively participating in any U.S. "special activity", our pool of essential foreign assistance and support would swiftly evaporate. The extent and speed of that pool's evaporation, furthermore, would be increased by the fact that few foreigners would note, and even fewer would pay attention to, any American legal distractions between "special activities" and other intelligence activities. In this sphere, foreign perceptions and beliefs -- not our assessment of their accuracy or validity -- would be controlling.

From the perspective of 26 years' experience in the profession of intelligence, I can state flatly that should H.R. 3822's proposed sub-section 503(a)(4), or anything like it, ever be enacted into law, few foreign individuals or entities, governments again included, whose cooperation and assistance we would need to conduct "special activities" -- or, for that matter, any intelligence activities of any consequence -- would be willing to put their fortunes, reputations or, in the case of individuals, their freedom and even their lives hostage to the discretion and secret-keeping capability of the Congress of the United States.

NOTIFICATION TIMING PROBLEMS

Quite apart from the nature and format of "findings", there is an important, also illustrative semantic problem in H.R. 3822's treatment of the time frame within which -- under that bill -- Congress must be notified of "special activities". Proposed Sec. 503(c)(2) says that:

> "In circumstances where time is of the essence and the President determines that it is important to the national security interests of the United States to initiate a special activity before the notice required by paragraph (1) can be given, such activity may be initiated without such notice."

Proposed Sec. 503(c)(3), however, says:

> "The President shall ensure that notice of a special activity undertaken pursuant to paragraph (2) is provided to the intelligence committees, or to the Members of Congress identified in paragraph (1), as soon as possible, but in no event later than forty-eight hours after the special activity has been authorized pursuant to subsection (a)."
>
> (emphasis added in both of the above quotations.)

There is a latent contradiction between (2) and (3) which could become very important in certain situations. In the real world, there is frequently a delay of at least 48 hours, often longer, between the authorization -- in Washington -- of a complex covert action operation or "special activity", and its initiation half a world away. In such a situation, the short-term tactical flexibility given the President by proposed 503(c)(2), "in circumstances where time is of the essence", is taken away by proposed 503(c)(3).

This is by no means a purely hypothetical problem. The previously mentioned 1980 exfiltration from Tehran of six American Embassy personnel, who hid for several weeks in the Canadian Embassy there, provides a perfect illustration of a real world situation that would put a President directly in the cross-fire between proposed 503(c)(2) and proposed 503(c)(3).

Exfiltrating American citizens -- in this case, U.S. government employees who had escaped from a U.S. Embassy seized by hostile local elements who were holding, as prisoners, the other U.S. personnel in that embassy -- might not be what the term "covert action" would normally suggest or denote to most people. Nonetheless, at least for the CIA, this would clearly be a "special activity" within the definition given in H.R. 3822's proposed section 503(e); for such an operation would patently be something "other than" an activity "intended solely for obtaining

necessary intelligence".

In the 1980 Tehran situation, however -- as Representative Mineta explained to this very sub-committee's parent committee on 8 April 1987 -- the Canadians, for their own security and protection, made their essential cooperation contingent on Congress' not being told about what was in train, or what the Canadians were doing, until after the operation was concluded. In the 1980 Tehran situation, furthermore, the period between the "authorization" and the "initiation" of the "special activity" in question -- exfiltrating the endangered Americans -- was measured in weeks, not hours.

Had H.R. 3822, as presently phrased, been on the statute books in 1980, President Carter -- not President Reagan -- would have been directly impaled on the horns of a very difficult dilemma. He would have had to either:

(a) ignore the law, or

(b) tell the Canadians that he could not lawfully meet the conditions they imposed on their essential assistance, even though declining that assistance clearly put American lives at risk.

I can not believe that any member of this sub-committee, or of the full House oversight committee, or, for that matter, of Congress would want to put any American President, of whatever party, in such a situation. This is far from the least of the reasons why I respectfully urge this sub-committee to reconsider the language of H.R. 3822, and all of that language's

implications, before recommending that this proposed bill, as it now stands, be enacted into law.

LARGER COMPLEXITIES: THE RISK OF "REFORMS"

In its conduct of Iran-Contra, the Reagan administration clearly abused the discretionary latitude afforded any administration of any party, in conducting covert operations, by the flexibility and ambiguity of some of the language in current statutes dealing with these matters. H.R. 3822 would remove the ambiguity and virtually eradicate the flexibility of the relevant statutes. Doing that, however, could easily prove procrustean and generate serious problems in future contingencies or situations not now forseen.

By reducing the permissible exceptions to a bare minimum, not always in consistent ways, H.R. 3822 would also push Congress far deeper into the "prior notification" thicket. In the light of Iran-Contra, this might seem desirable; but it is a punitive move that would probably be rued by future Congresses, as well as by future Presidents -- regardless of party.

As President Carter's, not President Reagan's, Deputy Assistant for National Security Affairs, David Aaron, put the matter quite neatly when testifying before the House intelligence oversight committee in September 1983 in connection with "special

activities" legislation that would also have altered the National Security Act of 1947's current section 501:

> "It was the purpose of [current] Sec. 501 to ensure that the Congress had sufficient access to information, in a timely way, to be able to exercise [its proper] functions in the field of intelligence activities. It was not [one of] the goals of Sec. 501 to make the Congress a co-decision-maker on covert action operations."

Drafted in the immediate aftermath of the Iran-Contra Report's preparation, H.R. 3822's language, at least to this reader's eye, reflects an eminently understandable desire to rap Ronald Reagan's knuckles and tie his hands. But Ronald Reagan leaves the Oval Office, permanently, in January 1989 -- less than a year hence -- and none of his successors, of whatever party, is likely to forget or ignore the lessons of Iran-Contra. Furthermore, if H.R. 3822 or any similar bill gets enacted, there is no way of telling what future President's hands that law may tie, under what particular circumstances, with what adverse impact on U.S. interests.

Legislation affecting Congressional oversight of intelligence activities, particularly "special activities", is invariably complicated; for it inevitably involves the judicious weighing and balancing of a myriad important, complex and often conflicting considerations and equities. Such legislation should not be drafted or enacted in haste or under the influence of strong emotions, including pique. Nor is it wise to draft,

debate and enact such legislation amid the distractions and pressures of a Presidential election year, including an election year's temptations to adopt or endorse positions, on controversial issues, that are poll or popularity-enhancing in the short run, but not necessarily in the long-term best interests of the United States. Such considerations apply with particular force to issues involving "reforms"; for reforms drafted and adopted under such conditions almost invariably prove to have unintended, undesired consequences.

During my own career in government, I was privileged to develop a close association with the Honorable Birch Bayh, the Senate Select Committee on Intelligence's second Chairman. We differed on many issues, as we still do, but became and remain good friends. He visited me in Germany, as a guest in my home -- where he was a great favorite with my children -- while I had overall responsibility for the U.S. intelligence community there and he was Chairman of the Senate oversight committee. On one evening during that visit, I assembled a representative, cross-sectional group of my abler young officers who were deeply and personally involved in our efforts to combat terrorism and other threats to the security of the United States. We sat up all night (literally) having a frank, suitably lubricated, no-holds-barred, give-and-take discussion. During that discussion, my front-line colleagues endeavored to explain, by citing a succession of concrete examples, how difficult it was to apply on

the banks of the Rhine -- and of other rivers around the world -- the sweeping, "thou shalt not, ever, under any circumstances" reform restrictions of the mid-1970, which sounded so splendid when proclaimed, passed, issued or endorsed along the banks of the Potomac.

As my young colleagues kept recounting their frustrating first-hand experiences with the results or consequences of these "reforms", the good Senator kept repeating, like an antiphonal response in a High Church Anglican service, "But this was never the intent of Congress!" My equally antiphonal response was that in the field, we did not have the luxury of trying to divine Congressional intent. Instead, we had to be guided, and were circumscribed, by what the government's lawyers, including the CIA's, construed to be the meaning of the language in statutes Congress enacted, such as the Foreign Intelligence Surveillance Act, or in Executive Orders and internal CIA regulations strongly influenced by Congressional attitudes.

No sensible person would contend, and I certainly do not, that our current laws dealing with covert action, and its oversight, can not be improved. This sub-committee and its staff are to be commended on the thought, care and effort that have clearly gone into the consideration and discussions of H.R. 3822. For reasons I have tried to explain, however, I do not believe that the end results this distinguished sub-committee or its full

parent Committee wants to achieve, in the discharge of Congress' Constitutionally-mandated responsibilities, are most likely to be attained by moving forward with H.R. 3822 or any similar legislation, unavoidably drafted in some haste in the wake of the issuance of the Iran-Contra Report and under the influence of emotions which that unhappy affair inevitably engendered on Capitol Hill -- particularly when any such legislation would have to be debated and enacted amidst the mounting, divisive and partisan pressures of a Presidential election year.

In my opinion, which I offer with diffident respect, our nation's interests would be far better served if, instead, a small group of knowledgeable, senior administration officials, past or present, could be convened to meet quietly with a corresponding, and correspondingly small, bi-partisan group of appropriate Congressional leaders, from both Houses; and then, over the course of several months' frank, private discussion, this joint body, working together, could develop a set of agreed principals regarding covert action, work out a viable system for resolving executive-legislative branch disputes, and supervise the measured, careful drafting of any new legislation thought to be warranted -- for formal introduction, debate, consideration and enactment after the 1988 electoral season, with its attendant demands and pressures, has passed. This may be a utopian dream, but as a concerned citizen who has devoted over a quarter century

to serving our nation as an intelligence professional, I would relish seeing this dream become a reality.

Thank you very much for your time and attention.